

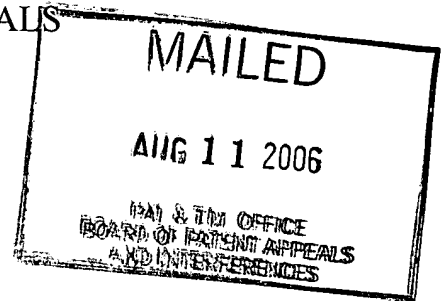
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAWRENCE W. HRUBESH

Application No. 10/050,437

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was received electronically at the Board of Patent Appeals and Interferences on July 28, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On November 25, 2005, appellant filed an Appeal Brief. A review of the file reveals that the Appeal Brief is not fully compliance with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the Appeal Brief filed November 25, 2005:

- 1) “Evidence appendix” as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) “Related proceedings appendix” as set forth in 37 CFR § 41.37(c)(1)(x).

A substitute appeal brief that is in compliance with the headings as set forth under 37 CFR § 41.37 are required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

On March 1, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 3, paragraph 8, the examiner has stated, "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Droege et al.(Patent No. 5,945,084), Pekala et al. (U.S. Patent No. 5,932,185), and Kaschmitter et al. (Patent No. 5,260,855) were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) 1207.02. Appropriate correction is required.

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Accordingly, it is

ORDERED that the application is returned to the Examiner for:

1) hold the Appeal Brief of November 25, 2005 defective;

2) request appellant to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;

3) vacate the Examiner's Answer mailed March 1, 2006, and issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section, paragraph (8); and

2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



DALE M. SHAW

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